



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and witness and one of the tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on July 8, 2009 for a 1 year fixed term tenancy beginning on August 1, 2009 and converting to a month to month tenancy on August 1, 2010 for a monthly rent of \$1,600.00 due on the 1st of each month with a security deposit of \$800.00 paid on July 8, 2009 and a pet damage deposit of \$400.00 paid on September 1, 2009.

The tenancy agreement included 7 pages of 26 addendums to the agreement including, but not limited to, terms requiring the tenants to keep the yard and gardens tidy and maintained and free of rubbish; the carpets must be professionally shampooed; and no smoking on the premises.

The tenancy ended on June 4, 2012 after the tenants provided the landlord with their notice to end the tenancy early as a result of the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property citing the landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit be vacant.

The landlord has submitted a document entitled "Entry Condition Report" that is undated but signed by the female tenant and the landlord's agent (witness). The tenant submits

that this document does not represent the condition of the unit at the start of the tenancy but rather it records it several months after the start of the tenancy.

The tenant submits the landlord did not complete a move in inspection and that the tenants provided this document to the landlord after being in the unit several months and because of this it couldn't record any damage that was hidden by furniture or other personal items already set up.

The landlord submits the report was completed at the start of the tenancy and that the tenant lost the original report completed by the landlord and provided this one that they had completed and that both parties agreed this was the condition when they signed the document itself.

The document submitted uses a legend that indicates a "√" good/acceptable and "X" for requires work. There are three columns beside each item recorded in each room – one for move in; one for move out; and one for comments. For all items in all rooms there is a "√" recorded in the move in column; there are a few "X's" marked in the move out column and some comments that are not clear when they were made (at move in or move out).

The most frequent comment is "not painted" when it comes to walls in the vestibule; the coat closet; dining room; kitchen; sitting room/bedroom down; linen closet; the second bathroom; master bedroom and closet; and upstairs 4th bedroom and closet. The living room states "some marks not paint". Next most common comment is "new blinds" in the living room; dining room; master bedroom; and upstairs 4th bedroom.

The parties agree there was a moved out inspection on June 4, 2012; that the landlord's agent had taken handwritten notes about the condition that she provided to the tenants; the tenants transcribed the handwritten notes into a typewritten document that includes the landlord's notes and the tenants' agreement or disagreement with the landlord's statements.

The landlord has also submitted a listing of items and amounts of compensation that the tenants have agreed with, however the tenant did not provide any testimony during the hearing acknowledging any agreement to amounts in the landlord's submissions in relation to any of the issues the landlord is claiming for.

The tenants also submit that any damage that will be covered by the landlord's renovations should not be subject to any compensation as the landlord had intended to make these repairs anyway and the renovations were the reasons the landlord intended to end the tenancy in the first place.

The landlord's agent submitted that she was not entirely sure what the landlord was intending to renovate other than modernizing the property to be more in keeping with an upcoming development scheduled for the immediate area.

The landlord claims the following compensation, with support in the form of estimates regarding costs:

Description	Amount
Cleaning Blinds	\$108.00
Blind Replacements	\$200.48
All other cleaning (missed and disagreed upon)	\$144.00
Door Bell Replacement (cover no longer available)	\$40.00
Light bulbs	\$10.00
Carpets (living room/master bedroom – cigarette burns & pink room stains)	\$461.88
Hardwood floor cleaning (scuffs)	\$84.00
Painting	\$1,930.20
Kitchen Cupboard Door	\$112.00
Sliding Door Handle	\$50.40
Bi-fold Closet Doors (replace and paint)	\$172.00
Exterior work (deck, oil stains, grass, garden beds)	\$588.00
Handyman services	\$72.80
Total	\$3,973.76

The tenants provided a copy of their response to the landlord's original list of deficiencies as follows:

1. Blinds: cleaning and replacements – the tenants submit that most of the blinds required cleaning and that some blinds required “slat” replacement only – tenant agrees to blind cleaning in the amount of \$90.00 and replacements of \$100.00.
2. All other cleaning – the tenant agrees to some cleaning including the freezer; windows; back yard garbage; room under deck; microwave and general cleaning in the amount of \$60.00.
3. Replacement door bell cover - \$10.00.
4. Light bulbs - \$10.00.
5. Carpets – the tenant agrees to repairs for cigarette burns in the bedroom in the amount of \$75.00; burns in the living room \$50.00; and stains in the brown trimmed bedroom but due to age of carpet does not agree to any compensation – the tenant provides no comment on the pink room;
6. Hardwood floor in dining room – the tenant submits “the hardwoods flooring was scuffed and faded when we moved in. It needed refinished when we moved in. It was hard to keep it clean because the finish would always chip off.”
7. Painting – the tenant submits for any claim regarding painting – “3 year tenant and it was not painted when moved in. There were already marks.” In the case of the master bedroom the tenant included the comment that it smell of smoke from the previous tenant as well.
8. Kitchen cupboard door – the tenant submits “One cupboard door broken and glued together. This cupboard came loose at the hinge and I asked you to fix it a couple of

times but you didn't so it started hanging and then one of my kids accidentally snapped it off. We fixed it as best as we could."

9. Sliding Handle Door – the tenant states: "disagree – this was already cracked when we moved in and eventually broke off".
10. Bi-fold Closet Door – the tenant states: "disagree – these bifolds were slightly split at the metal clasp when we moved in and slowly cracked further making it impossible to use."
11. Exterior work – back ½ acreage not mowed – the tenants submit this was not part of their responsibility to cut this area as it is a pasture; oil stains and spills on driveway - the tenant disagrees as there were stains on the driveway prior to them and that they did contribute a little but not all of the stains; garden beds – the tenant disagrees because "when we moved in there was little dirt in the garden beds and three sparse bushes. In the three years that we lived here you never topped it up with soil.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Despite the tenants' submission that the landlord should not receive any compensation for renovations they planned to make, I find that there is no exemption, within the *Act*, to the tenants' obligations under Section 37 if the landlord is ending the tenancy for the purposes of making renovations.

In relation to the validity of the move in inspection report, I find that despite the disputed testimony as to when and how it was complete and with a lack of evidence from either party to confirm when and how it was completed, I find the parties agreed to this document as a record of the condition at the start of the tenancy.

I further note that as per the tenant's testimony that she is also a property manager she should recognize the importance of a complete report at the time of move in or as soon as possible afterward. In regard to the tenants' submissions that items claimed by the landlord as needing repair were already damaged at the start of the tenancy, I find it very unlikely that the tenant would have failed to record these deficiencies or at the very

least provided some documentary evidence that they had reported these deficiencies at a later time than during the move in inspection or when she completed the document.

For these reasons, I accept the document submitted by the landlord as an accurate record of the condition of the rental unit at the start of the tenancy and fulfilling the requirements under Section 23 for the landlord to ensure a report is completed.

In addition, as noted above, from the tenants' submissions summarized above, where the tenants indicate that the condition is something other than that recorded in the move in condition inspection report I prefer the condition recorded in the report as the accurate record and discount the tenants' declarations that the condition was different from that report.

As a result, in relation to the hardwood floors; the painting; the kitchen cupboard door; the sliding door handle; the bi-fold closet doors and the oil stains on the driveway I find the damage reported at the end of the tenancy was a result of this tenancy and the tenants are responsible for compensation to the landlord. I accept the landlord has established the value of this loss through their submissions of estimates.

As the tenants have agreed to blind cleaning; blind (slat) replacement; general cleaning; replacement doorbell cover; light bulbs; and carpets, I find the landlord is entitled to compensation for all of these items. I also accept from the photographic evidence submitted by the landlord and the estimates provided that the landlord has also established the value of this loss through their submissions.

Finally, in relation to the remaining exterior work I find no differentiation between the grass in the "½ acreage" and the rest of the yard and such I find the tenants responsible for cutting this area of grass. Similarly, I find the addendum to the tenancy agreement makes the tenants responsible for the maintenance and there would be no expectation that the landlord should have topped up the soil – that was clearly the tenants' obligation.

Therefore, I find the tenant's are responsible for compensating the landlord for the exterior work required at the end of the tenancy and I find the landlord has established the value of this work through their submissions.

Conclusion

For the reasons noted above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,023.76** comprised of \$3,973.76 (see table above) and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and pet damage deposits held in the amount of \$1,200.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,823.76**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 27, 2012.

Residential Tenancy Branch